

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

JEWELL IMPLEMENT CO.

ADMINISTRATIVE CONSENT ORDER

NO. 2007-AQ- **10**

NO. 2007-SW- **05**

TO: Gary Vulgamott, President
Jewell Implement Co.
710 Edwards St.
Jewell, Iowa 50130

I. SUMMARY

This administrative consent order is entered into between Jewell Implement Co., (Jewell Implement) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding improper disposal and open burning of solid waste at the site. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Relating to technical requirements:

Eric Wiklund, Field Office #2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.134(9) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Jewell Implement is primarily a farm implement parts retailer. The facility is located inside the city limits of Jewell, Iowa.

PAST HISTORY

2. On March 5, 1996, DNR Field Office 2 received a complaint of open burning at Jewell Implement. On March 18, 1996, DNR Field Office 2 personnel visited Jewell Implement and observed a burn pile that contained trade waste, including but not limited to paper and cardboard. On March 26, 1996, DNR issued a Notice of Violation letter for open burning of trade waste to Jewell Implement.

3. On May 30, 1996, DNR conducted a follow up inspection at Jewell Implement and documented that open burning had ceased.

CURRENT VIOLATION

4. On October 16, 2006, DNR Field Office 2 personnel observed a plume of black smoke from Jewell Implement. The field staff visited Jewell Implement and observed that trade waste was being deposited in a barrel and burned.

5. On October 18, 2006, DNR Field Office 2 issued a Notice of Violation letter to Jewell Implement for the open burning observed on October 16, 2006. The letter informed Jewell Implement the matter was being referred for further enforcement.

6. Jewell Implement neither admits nor denies the above-mentioned facts by signing this consent order.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2 prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in rules 23.2(2) (variances) and 23.2(3) (exemptions). On October 16, 2006, DNR Field Office 2 documented open burning of trade waste at Jewell Implement in violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

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4. Iowa Code section 455B.307 and 567 IAC 100.4 state that unless provided otherwise, a private or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the DNR. The above-mentioned facts indicate a violation of these provisions.

V. ORDER

THEREFORE, DNR orders and Jewell Implement agrees to do the following:

1. Immediately cease all open burning and open dumping at the site;
2. Develop a solid waste management plan to be submitted to Field Office 2 within 30 days of the date the Director signs this administrative consent order; and
3. Pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed effective 30 days from receipt of this order by Jewell Implement. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$1,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Jewell Implement has saved costs by not properly removing, transporting and disposing of the solid wastes from this site. Even considering the majority of burned materials were cardboard and paper, proper disposal would have some cost associated. Based on these considerations, \$50.00 is assessed for this factor.

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Gravity – Improper disposal of solid waste and the open burning of solid waste can release toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. The violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste rules is required of all persons in this state. Based on the above considerations, \$400.00 is assessed for this factor.


Culpability – Jewell Implement has been previously notified of the DNR's open burning and solid waste regulations and continued to violate the regulations. Jewell Implement has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Therefore, based on the above considerations, \$550.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Jewell Implement. For that reason, Jewell Implement waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 7 day of
May, 2007.



Gay Helgeson, Owner
Jewell Implement Co.

Dated this 1 day of
May, 2007.

Con 10-6 Hamilton County; Field Office 2; Kelli Book; Dan Stipe; VI.C, VII.C.1